

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

MATTHEW MYERS,

Petitioner,

v.

NETHANJAH BREITENBACH, *et al.*,

Respondents.

Case No. 3:23-cv-00293-ART-CLB

ORDER

This action is a petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, by Matthew Myers, an individual incarcerated at the Northern Nevada Correctional Center. On June 20, 2023, the Court received from Myers an application to proceed *in forma pauperis* (ECF No. 1), a petition for writ of habeas corpus (ECF No. 1-1), a motion for appointment of counsel (ECF No. 1-5), and a motion for permission to exceed page limit (ECF No. 1-4). On June 23, 2023, Myers filed another motion for appointment of counsel (ECF No. 3).

The information provided by Myers in his application to proceed *in forma pauperis* (ECF No. 1) shows that he is able to pay the filing fee for this action. The Court will, therefore, deny the application to proceed *in forma pauperis*, but will not set a deadline for Myers to pay the \$5 filing fee until after appointed counsel appears for him.

State prisoners applying for habeas corpus relief are not entitled to appointed counsel unless the circumstances indicate that appointed counsel is necessary to prevent due process violations. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986) (citing *Kreiling v. Field*, 431 F.2d 638, 640 (9th Cir. 1970) (per curiam)). The court may, however, appoint counsel at any stage of the proceedings if the interests of justice so require. See 18 U.S.C. § 3006A; *see also* Rule 8(c), Rules Governing § 2254 Cases; *Chaney*, 801 F.2d at 1196. It appears

1 that Myers was convicted of a large number of crimes and that his habeas petition  
2 is somewhat complex, and the Court determines that the interests of justice call  
3 for appointment of counsel. The Court will grant Myers's motions for appointment  
4 of counsel and will appoint the Federal Public Defender for the District of Nevada  
5 (FPD) to represent him.

6 Myers's motion for permission to exceed page limit (ECF No. 1-4) will be  
7 rendered moot, as the Court will grant Myers an opportunity to file an amended  
8 petition with counsel. The motion for permission to exceed page limit will be  
9 denied on that ground.

10 The Court has examined Myers's petition pursuant to Rule 4 of the Rules  
11 Governing Section 2254 Cases in the United States District Courts and  
12 determines that it merits service upon the Respondents. The Court will order the  
13 petition served upon the Respondents, and will direct the Respondents to appear,  
14 but will not require any further action on the part of the Respondents at this  
15 time.

16 It is therefore ordered that Petitioner's Application to Proceed *in Forma*  
17 *Pauperis* (ECF No. 1) is denied.

18 It is further ordered that the Clerk of the Court is directed to separately file  
19 the Petition for Writ of Habeas Corpus (ECF No. 1-1), the Exhibits in Support of  
20 Petition for Writ of Habeas Corpus (ECF Nos. 1-2, 1-3), the Motion for Permission  
21 to Exceed Page Limit (ECF No. 1-4), and the Motion for Appointment of Counsel  
22 (ECF No. 1-5).

23 It is further ordered that Petitioner's Motions for Appointment of Counsel  
24 (ECF Nos. 1-5 and 3) are granted. The Federal Public Defender for the District of  
25 Nevada (FPD) is appointed to represent the Petitioner. If the FPD is unable to  
26 represent the Petitioner, because of a conflict of interest or any other reason,  
27 alternate counsel will be appointed. Counsel will represent Petitioner in all federal  
28 court proceedings relating to this matter, unless allowed to withdraw.

1 It is further ordered that the Clerk of the Court is directed to electronically  
2 serve upon the FPD a copy of this order, together with a copy of the Petition for  
3 Writ of Habeas Corpus (ECF No. 1-1).

4 It is further ordered that the FPD will have 30 days from the date of this  
5 order to file a notice of appearance, or to indicate to the Court its inability to  
6 represent the Petitioner in this case.

7 It is further ordered that the Court will set a deadline for payment of the  
8 filing fee after counsel appears for the Petitioner.

9 It is further ordered that Petitioner's Motion for Permission to Exceed Page  
10 Limit (ECF No. 1-4) is denied.

11 It is further ordered that the Clerk of the Court is directed to add Aaron  
12 Ford, Attorney General of the State of Nevada, as counsel for Respondents and to  
13 provide Respondents an electronic copy of all items previously filed in this case  
14 by regenerating the Notice of Electronic Filing to the office of the Attorney General  
15 only.

16 It is further ordered that Respondents will have 30 days from the date of  
17 this order to appear in this action. Respondents will not be required to respond  
18 to the habeas petition at this time.

19 It is further ordered that, pursuant to Federal Rule of Civil Procedure 25(d),  
20 Nethanjah Breitenbach is substituted for Fernandeiz Frazier as the respondent  
21 warden. The Clerk of the Court is directed to update the docket to reflect this  
22 change.

23 DATED THIS 7<sup>th</sup> day of July, 2023.

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26 ANNE R. TRAUM  
27 UNITED STATES DISTRICT JUDGE  
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